

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

OP.No. 19531 of 2000(A)

PETITIONER:

S.UNIKRISHNAN NAIR,
PROPRIETOR, PERKINS
THYCAUD, TRIVANDRUM.

BY ADV. SRI.C.D.SREENIVAS

RESPONDENTS:

1. THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, NEW DELHI.
2. THE ASST. PROVIDENT FUND COMMISSIONER KERALA, TRIVANDRUM - 4.
3. THE RECOVERY OFFICER EMPLOYEES PROVIDENT FUNDS BHAVISHYA NIDHI BHAVAN, PATTAM, TRIVANDRUM.
4. AIR PORT AUTHORITY OF INIDA REPRESENTED BY ITS DIRECTOR NATIONAL AIR PORT DIVISION, TRIVANDRUM.
5. THE SECRETARY, TRIVANDRUM DISTRICT COMMITTEE, AIR PORT EMPLOYEES FEDERATION OF INDIA, TRIVANDRUM.

BY ADV. SRI.THOMAS ABRAHAM
SRI.N.N.SUGUNAPALAN, SC.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP.No. 19531/2000(A)

ORDER ON CMP NO.32631/2000 IN OP NO.19531/2000

DISMISSED

3.12.07.

SD/-
S.SIRI JAGAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1: COPY OF THE TENDER LETTER NO.P.3131/98 DATED 26.6.2000.
- EXT. P1(A): COPY OF THE TENDER LETTER NO.P.3132/98 DATED 27.6.1998.
- EXT. P2: COPY OF THE AGREEMENT DATED 27.7.98.
- EXT. P3: COPY OF THE AGREEMENT DATED 27.7.98 NO.A.G/98-99/017.
- EXT. P4: COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 1.9.1999.
- EXT. P5: COPY OF THE SUPREME COURT DECISION IN AIR 1986 463 BEFORE THE P.F. ASST. COMMISSIONER TRIVANDRUM PROCEEDINGS NO.K.R./12962/EN &I(3)99.
- EXT. P6: COPY OF THE ORDER BEFORE THE 2ND RESPONDENT DATED 30.11.99.
- EXT. P7: COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT NO. ATA-33(7) DATED 10.1.2000.
- EXT. P8: COPY OF THE ORDER IN ATA 33(7)2000 BEFORE THE 1ST RESPONDENT DDATED 2.5.2000.
- EXT. P9: COPY OF THE REGISTER NOTICE ISSUED BY THE 3RD RESPONDENT DATED 5.6.2000.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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O.P. No. 19531 of 2000(A)

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Dated, this the 3rd day of December, 2007

JUDGMENT

The petitioner is challenging Exts. P6 and P8 orders passed by the Assistant Provident Fund Commissioner, Thiruvananthapuram and the Employees Provident Fund Appellate Tribunal, in the matter of assessment of arrears of contributions payable by the petitioner under the Employees Provident Funds and Miscellaneous Provisions Act, in respect his employees, while undertaking contract work on behalf of the 4th respondent. The learned counsel for the 4th respondent points out that Ext.P6 order is a composite order in respect of two contractors namely M/s.Ajantha Electricals and M/s.Perkins, Thycaud, Trivandrum. Both of them filed separate appeals before the tribunal which also were dismissed. The said Ajantha Electricals challenged Ext.P6 order in appeal in OP No.14338/02, which was dismissed. He makes available a copy of the judgment in that original petition. In that judgment, I held

as follows:

Petitioner is a contractor executing some electrical works for the 1st respondent-Airport Authority of India. The petitioner is aggrieved by Exts.P14 and P16 orders which are the orders of the original authority and the appellate authority under the Employees Provident Funds and Miscellaneous Provisions Act holding that the petitioner is an establishment liable to be covered under the Act. The petitioner challenges the same on two grounds. The first is that since the 1st respondent-authority is an establishment exempted from the purview of Section 16 of the Act, the petitioner who is executing works in an exempted establishment is also not liable to be covered under the Act. The second contention is that since the petitioner is not employing the required number of workers for coverage under the Act, the orders of the lower authorities holding that the petitioner's establishment is liable to be covered under the Act is unsustainable.

2. I am of opinion that these contentions need not be considered at all in this case because as revealed from the impugned orders, the petitioner had earlier suffered an order under Section 7A of the Act holding that the petitioner is liable to be covered under the Act. That order was challenged under the erstwhile Section 19A of the Act, which was later repealed by amendment of the Act as a consequence of which, that petition was forwarded to the Employees Provident Fund Appellate Tribunal, who also dismissed the petition. The petitioner has not chosen to challenge those orders in any proceedings known to law. Therefore, the question of coverage of the petitioner under the Act has already become final and he cannot now rake up the same again in fresh proceedings under Section 7A. That being so, even without going into the contentions raised in this original petition, the original petition is liable to be dismissed.

3. Even otherwise, I do not find any merit in the contentions of the petitioner. The 1st respondent-authority is exempted from the provisions of the Act only because the employees of the 1st respondent are getting social insurance benefits equivalent to the benefits under the Provident Funds Act under their own rules. The petitioner has no case that the petitioner's employees have any kind of such social insurance by way of provident fund or otherwise. That being so, even though the 1st respondent is exempted from the purview of the Act, the petitioner cannot claim the benefit of that exemption in so far as its employees are not enjoying any of the benefits that are being enjoyed by the employees of the 1st respondent similar to the benefits provided under the Act.

4. Regarding the second contention, the petitioner has not chosen to raise such a contention before the 7A authority to the effect that the petitioner's establishment is not liable to be covered under the Act since the establishment does not employ the required number of employees required for coverage under the Act. No such contention

has also been raised before the appellate authority. That being so, the petitioner cannot now raise such a contention in this original petition.

For the above reasons, I do not find any merit in the original petition and accordingly the same is dismissed.

2. I am satisfied that the findings in that judgment are applicable equally to the petitioner's case also. Accordingly, following the said judgment this original petition is dismissed.

Sd/-
S.SIRI JAGAN,
JUDGE

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